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Subject:— Opinions under the Collective Fines ordinance 1942

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On 17th June 1939 Vasudev Balkrishna Mirajkar of Nipani was adjudged insolvent by the First Class Sub-Judge, Belgaum. On 23rd October, 1940 Mr. T.S. Nargundkar was appointed Receiver of the insolvent's property. Since that time Mr. Nargundkar has been acting as Receiver and in that capacity has been in possession of a house in Nipani bearing Survey No.2821. Then on 11th September 1942, the Government of Bombay, in virtue of powers conferred by the Collective Fines Ordinance, 1942., imposed a collective fine on the inhabitants of the village of Nipani. In pursuance of that order the District Magistrate, Belgaum ordered Vasudev Balkrishna Mirajkar to pay his portion of the fine. Apparently there had been two demands in this case, first a demand of Rs.11Ø- and then of Rs.78/-. It seems that in both cases it was Mirajkar who was ordered to pay the demand. When it was discovered that Mirajkar was an insolvent the Receiver Mr. Nargundkar was asked to pay. Whether there has been an order in respect of ~~M~~ Mr. Nargundkar is not clear The R.L.A. is asked to advise whether recovery of part of the collective fine from the Receiver is contrary to law.

2. The Collective Fines Ordinance, 1942, authorises the imposition of a fine on the inhanitants of offending areas. The fine is primarily personal since it is imposed, not upon property but upon persons. No doubt the fine can be recovered by issue of process against, or sale of property. But such measures can be taken only against the property of a person against whom an order is made. The fine is not imposed on property as such, irrespective of its holder. If Mirajkar, the insolvent is ordered to contribute, the amount of contribution can be recovered only from his property. Since he was an inslolvent before the passing of such an order ~~kwk~~ he would for all ~~prxxtix~~ practical purposes have no property. The property which he owned before adjudication will now in virtue of section 28(2) of the Provl. Insolvency Act, 1920, vest in the Receiver and that property will not be made liable to contribution merely in

virtue of an order passed against the insolvent.

3. The next question is whether the Receiver can be ordered to contribute. In this case the Receiver seems at first sight to fall within the defination of "inhabitants of an area" in as much as he holds property in Nipani. "Inhabitants of an area include persons who by themselves or by their agents or servants occupy or hold land or other immoveable property within such area". On the other hand it is arguable that the Ordinance did not intend to make liable Receivers who hold property for special purposes and not for their own benefit. It is also doubtful how far under the Provincial Insolvency Act the Receiver would be justified in debiting his contribution to the property which he holds as Receiver. But it seems unnecessary in this case to decide definitely whether or not Receivers and other trustees come within the defination of inhabitants of the area. Even if they come within the defination it seems advisable to exempt Mr. Nargundkar the present Receiver. He seems to be a loyal and respectable citizen. He is an officer of the Court in virtue of being a Receiver and he is not a resident of Nipani. Personally he deserves exemption. It is true that there vests in him as a Receiver, property which formerly belonged to a person liable to contribute under the Ordinance, but on the whole I think this is a fit case for exemption.

Id/- P.N.M.8/6

Remembrancer of Legal Affairs.

U.R. to H.D.(Spl). No. 4146, dated the 10th June 1943.

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The fine against the insolvent cannot be recovered from the property in the hands of the Receiver. That property has ceased to vest in the insolvent and now vests in the receiver for the purpose of distribution among the crediters. There must be a fine aginst the receiver ive. a new order calling upon the receiver to contribute. Although the point is not free from doubt such an order would not in my opinion be illegal since technically the receiver is an inhabitant of the area of Nipani in as much as he holds the insolventâs property which is presumably at Nipani (see the explanation to clause 3 of the Collective Fines Ordinance, 1942). Apart from the lagality of an order against the receiver, I think he deserves exemption.

Id/- P.N.M. 30/7
Remembrancer of Legal Affairs.

U.R. to H.D. (Special) No.115-2 dated the 30th July 1953.

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